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In the

Supreme Court of the United States

OCTOBER TERM, 1967

No. [redacted] 9

BERNARD SHAPIRO, Welfare Commissioner of Connecticut

Appellant

v.

VIVIAN THOMPSON

Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

APPENDIX TO APPELLANT'S BRIEF

ROBERT K. KILLIAN
Attorney General
30 Trinity Street
Hartford, Connecticut

FRANCIS J. MACGREGOR
Assistant Attorney General
99 Meadow Street
East Hartford, Connecticut

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RELEVANT DOCKET ENTRIES

Proceedings

DATE	
1967	
2/15	Complaint filed.
2/15	Application for Leave to Proceed in Forma Pauperis, filed, together with Affidavit of Indigency. Order granting permission to proceed in forma pauperis, entered. Blumenfeld, J. M-2/6/67
2/15	Appearance of Brian L. Hollander, (Neighborhood Legal Services, Inc.), entered for Plaintiff.
2/15	Application for Convening of Three-Judge District Court, (28 USC, Sec. 2281), filed.
2/16	Summons issued and together with copies of same and of Complaint, Applications and Order, handed to the Marshal for service.
2/23	Marshal's return showing service, filed. — Summons, applications and Order, Complaint.
2/24	Designation of Judges entered. The following judges are designated to sit in this case: Honorable J. Joseph Smith, USCJ; Honorable M. Joseph Blumenfeld, USDJ; and Honorable T. Emmett Clarie, USDJ. J. Edward Lumbard, Chief Judge, U.S. Court of Appeals, 2nd Circuit. M-2/27/67 Copies mailed 3 judges; Atty. Hollander and Commissioner Shapiro.

3/2

Appearance of Francis J. MacGregor, Assistant Attorney General, entered for defendant, Bernard Shapiro. Copies to 3 judges.

3/2

Motion to Dismiss Complaint for Lack of Jurisdiction and Notice of Motion, filed by Defendant. Copies to 3 judges.

3/2

Copies of Complaint sent to Governor of the State of Conn. and to the Attorney General for the State of Conn., pursuant to 28 U.S.C. Sec. 2284 (2).

3/2

Notification sent by the Clerk to the United States of the pendency of this action, pursuant to 28 U.S.C., Sec. 2403 (1965). 3 copies served upon the United States Attorney and 2 copies sent Registered Mail by the U.S. Marshal to the Attorney General of U.S., return receipt requested. Copies sent to counsel for the plaintiff and defendant and to the Governor and Attorney General for the State of Conn.

3/6

Marshal's return showing service, filed. — Notification.

3/6

Notice of Motion (re Motion to Dismiss), filed by Defendant. Copies to 3 Judges.

3/20

Brief on Motion to Dismiss, filed by Defendant. Copies mailed to 3 Judges.

3/23

Memorandum of Law in Opposition to Defendant's Motion to Dismiss, filed by Plaintiff. Copies handed to Judges Smith, Blumenfeld & Clarie.

3/27

Hearing on Defendant's Motion to Dismiss Complaint for Lack of Jurisdiction. Motion denied. Smith, U.S.C.J.; Blumenfeld, U.S.D.J.; Clarie, U.S.D.J. M-3/28/67

3/31

Notification received from the Solicitor General of the United States to the effect that the United States of America will not intervene in this case, pursuant to 28 U.S.C. Sec. 2403 (1965). Copies of said notification sent to the 3-Judge District Court panel.

4/3

Answer, filed. Copies mailed to three Judges.

4/25

Order entered that this case will be assigned for trial on Friday, May 5, 1967, at 10:00 a.m., at Hartford, Conn. Steps to be taken in preparation for hearing included in Order. Smith, USCJ; Blumenfeld, USDJ; Clarie, U.S.D.J. M-4/27/67. Copies mailed to counsel; copies distributed to Judges Smith and Clarie per Judge Blumenfeld's Office.

4/27

Placed on Trial List.

5/17

Pre-Trial Memorandum, filed by Defendant at Hartford. Copy given to each Judge on 3-Judge panel.

5/19

Court Trial before 3-Judge Panel commences. w Plaintiff's witnesses sworn and testified. Both sides rest. Summation by counsel 11:43 A.M. to 12:57 P.M. Decision Reserved. Smith, USCJ; Clarie, USDJ; and Blumenfeld, USDJ. M-5/22/67

5/25

Court Reporter's Notes of Proceedings of 5/19/67, filed at Hartford. Sanders, R.

6/19

Memorandum of Decision, entered. Judgment may enter in favor of the plaintiff declaring the residence requirement of Sec. 17-2d of the Connecticut General Statutes invalid as applied to plaintiff awarding plaintiff monies unconstitutionally withheld, and enjoining defendant from denying plaintiff Aid to Dependent Children solely because of her failure to meet the one-year residence requirement. Form of decree, including computation of amount of damages due, may be submitted by counsel for plaintiff on notice to counsel for defendant. Smith, U.S.C.J.; Blumenfeld, U.S.D.J. *Copies mailed from Hartford to Attys. Hollander and MacGregor. Copies handed three judges. M-6/20/67. * Clarie, U.S.D.J. — Dissent

6/30

Court Reporter's Transcript of Proceedings of May 19, 1967, filed. Sanders, R.

6/30

Judgment entered that Chapter 299, Sec. 17-2d of the Connecticut General Statutes is invalid as applied to Plaintiff; that an injunction hereby issues permanently restraining and enjoining the Defendant and his successors, and all other persons responsible for the enforcement of the welfare law of Connecticut from the present and further enforcement of Chapter 299, Sec. 17-2d of the Connecticut General Statutes against the Plaintiff; that the defendant pay to the plaintiff the sum of $311.91, the sum of monies unconstitutionally withheld from the Plaintiff by the Defendant. Smith, U.S.C.J.; Blumenfeld, U.S.D.J.; Clarie, U.S.D.J. — Dissent. Copies mailed Attys. Hollander and MacGregor, Asst. Atty. Gen. M-7/5/67

7/18

Agreed Stipulation Of Facts, filed by Plaintiff, at Hartford

7/19

Supplemental Stipulation Of Facts, filed at Hartford by Plaintiff.

8/20

Notice Of Appeal to the Supreme Court of the United States with Affidavit of Service, filed by Defendant. Copy mailed Atty Hollander.

8/20

Motion For Supersedeas, filed by Defendant.
(Copies of Notice of Appeal and Motion For Supersedeas, w/cc of Order, mailed to Attorney Hollander and to Judges Smith, Blumenfeld, Clarie.

8/20

Original Motion for Supersedeas and original Order mailed to Judge Smith (per GCE).

8/26

Order Granting Supersedeas, entered. This cause came on to be heard on motion of defendant for a stay pending defendant's appeal to U.S. Supreme Court and it appearing to the Court that defendant is entitled to such a stay, it is ORDERED, that the execution of and any proceedings to enforce the judgment entered herein on June 30, 1967 be stayed pending the determination of defendant's appeal from such judgment. No bond is required. Smith, U.S.C.J.; Blumenfeld, U.S.D.J.; Clarie, U.S.D.J. M-7/26/67. Copies mailed to Attorneys Hollander and MacGregor, Ass't. Attorney General.

8/31

Designation of Additional Parts of the Record to be Included in the Transcript to the Supreme Court of the United States, filed by Plaintiff. Copies mailed to 3 Judges.

**5/18

Plaintiff's Pre-Trial Memorandum of Law, filed at Hartford.

**5/18

Appendix to Plaintiff's Pre-Trial Memorandum of Law, filed at Hartford.

8/11

Motion to Extend Time for Filing Record and Docketing Appeal (to and including Nov. 15, 1967), filed by Defendant. Copies mailed to Judges Smith, Blumenfeld and Clarie.

9/7

Order entered granting Defendant's Motion to Extend Time for Filing Record and Docketing Appeal, to and including Nov. 15, 1967. Smith, U.S.C.J.; Blumenfeld, J., U.S.D.J.; Clarie, J., U.S.D.J. Copies of Motion with Order endorsed thereon mailed aforementioned Judges and Attys. Hollander and MacGregor. M-9/7/67

COMPLAINT

United States District Court
District of Connecticut

VIVIAN MARIE THOMPSON
v.
BERNARD SHAPIRO, Commissioner of Welfare of the State of Connecticut } Civil Action # 11821

COMPLAINT

1. This action arises under Article IV, Section 2 (1) and Amendment XIV, Section 1, of the Constitution of the United States and United States Code, Title 28, Section 1343 (3), and Title 42, Sections 1983 and 1988. Jurisdiction is conferred upon

this Court by United States Code, Title 28, Sections 2281 and 2284.

2. Plaintiff, VIVIAN MARIE THOMPSON, is a resident of the City of Hartford and County of Hartford, a resident and taxpayer of the State of Connecticut, and a citizen of the United States and the State of Connecticut.

3. Defendant, BERNARD SHAPIRO, is the Commissioner of Welfare of the State of Connecticut, in which capacity he is charged with administering the Welfare Laws of said State. Connecticut General Statutes, Chapter 299, Section 17-2 (1965).

4. The Court has jurisdiction over the parties hereto and of the subject matter of the complaint, and as will fully appear from the facts hereinafter set forth, a justifiable issue is raised which entiles the Plaintiff to a declaratory judgment under United States Code, Title 28, Section 2201 as to the validity of the State Statute hereinafter put in issue.

5. The following Article of, and Amendment to, the Constitution of the United States are applicable to this action:

a. Article IV, Section 2 (1) provides:

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

b. Amendment XIV, Section 1, provides in pertinent part:

". . .No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: . . . nor deny to any person within its jurisdiction the equal protection of the laws."

6. Section 17-85 of Chapter 302 of the Connecticut General Statutes establishes the standard to be applied by the

Connecticut Welfare Department in determining eligibility for categorical public assistance under the Aid to Families with Dependent Children program, Connecticut General Statutes, Chapter 302, Part II, Section 17-84 et seq. (1965). Said Section provides:

> "Any relative having a dependent child or dependent children, *who is unable to furnish suitable support therefor* in his own home, shall be eligible to apply for and receive the aid authorized by this part, for such dependent child or children and to meet such relative's own needs, if such applicant has not made an assignment or transfer or other disposition of property without reasonable consideration or for the purpose of qualifying for an award if such relative is to be supported wholly or in part under the provisions of this part; provided ineligibility because of such disposition shall continue only for that period of time from the date of disposition over which the fair value of such property, together with all other income and resources, would furnish support on a reasonable standard of health and decency; and provided no needy dependent child shall be deemed ineligible for assistance by reason of any such transfer or other disposition of property by a relative not legally liable for the support of such child. Each such dependent child shall be supported in a home in this state, suitable for his upbringing, which such relative maintains as his own. Aid shall not be denied any such dependent child on the ground that such relative is not a citizen of this state or of the United States. In the case of a child who reaches his eighteenth birthday during a school year and while in attendance at school, such aid shall continue for such child, so long as he attends school, until the end of such school year." (emphasis added).

7. Section 17-2d of Chapter 299 of the Connecticut General Statutes places limitations on the availability of categor-

ical public assistance to persons eligible under Section 17-85, on the basis of the length of time that they have resided in Connecticut and their economic condition at the time that they entered the State. Said Section provides:

> "When any person comes into this state *without visible means of support for the immediate future* and applies for aid to dependent children under Chapter 301 (sic.) or general assistance under Part I of Chapter 308 *within one year from his arrival,* such person shall be eligible only for temporary aid or care until arrangements are made for his return . . ." (emphasis added).

8. Section 17-3d of the Connecticut General Statutes, as interpreted and enforced by the Connecticut Welfare Department, only authorizes the denial of categorical public assistance to certain categories of indigent residents of the State of Connecticut during their first year of residence in said State; indigent residents not falling within these categories are eligible for assistance within the one year period set out in said Statute. Chapter II, Section 219.1 of the Regulations contained in the Manual of said Department sets out the categories of residents to whom assistance is to be denied:

> "1. Persons or families who arrive in Connecticut without specific employment.
>
> 2. Those arriving without regular income or resources sufficient to enable the family to be self-supporting in accordance with Standards of Public Assistance.
>
> 3. 'Immediate future' means within three months after arriving in Connecticut.
>
> NOTE: Support from relatives or friends, or from a public, private, or voluntary agency for three months after arrival will not satisfy the requirements of the

law, which relates to self-support rather than to dependency."

9. Plaintiff is 19 years old and unwed. Her formal education ended during her junior year in Dorchester public high school, Dorchester, Massachusetts. She is the mother of a thirteen month old boy and a two week old girl.

10. For eight months preceding the month of September, 1966, Plaintiff and her son Bruce, while residing at 9 Greenwood Street, Dorchester, Massachusetts, received continuous public assistance from the City of Boston under that City's Welfare Program.

11. Plaintiff's mother, Mrs. Bessie Harper, of 1215 Main Street, Hartford, Connecticut, has continuously resided in said City for approximately eight years. During this period of time, she has provided the Plaintiff with periodic financial assistance as permitted by her income, and has visited and written to the Plaintiff at her residence in Massachusetts.

12. Plaintiff was encouraged by her mother to take up residence in Hartford, Connecticut, with the assurance that her mother would assist her financially, to whatever extent possible.

13. Plaintiff, having no knowledge of her natural father's whereabouts, and having been denied assistance, financial and otherwise, by her relatives in the Boston area, moved herself and her son to Hartford, Connecticut, in June 1966, so as to be near her mother, the only person who was taking any interest in her life at that time.

14. Upon arriving in Hartford, Plaintiff and her son immediately moved in with her mother at the latter's quarters at the Empire Hotel, 1215 Main Street, Hartford, Connecticut, where she and her son resided continuously until on or about

August 26, 1966, at which time Plaintiff and her son moved to 25 Florence Street, Hartford, Connecticut.

15. During said period, Plaintiff's sole sources of support were her mother's contributions of housing and food and the remaining public assistance benefits which she received from Massachusetts. She moved to her own quarters because it became financially impossible for her mother to assist her and her son on her present income. At the time that she moved, Plaintiff did not attempt to return to Massachusetts; her only intention was to find suitable quarters elsewhere in Hartford.

16. Plaintiff was five months pregnant when she stopped receiving financial assistance from her mother. She was soley responsible for the daily care of her son, and was without sufficient funds to hire a babysitter. For these reasons, Plaintiff was prevented from either seeking gainful employment so as to be able to support herself and her son, or from enrolling in a work training program under the Manpower Development Training Act administered by the State Welfare Department.

17. On September 7, 1966, Plaintiff, being solely responsible for the support of herself and her son and being without any means to accomplish such support, filed an application with the Hartford Department of Public Welfare requesting public assistance from said agency.

18. On September 8, 1966, Plaintiff's application was approved, and Plaintiff received her initial assistance check from said agency. At that time, Plaintiff was advised that the assistance which she was receiving from said agency was only temporary and that she would have to make application to the Connecticut Welfare Department if she wished to received public assistance on a continuing basis. She was also advised of the improbability of her receiving such assistance because of the statute, herein in issue. Plaintiff declined, however, to accept assistance from the Hartford Department of Public Wel-

fare for the purpose of returning to Massachusetts for the reason that she wished to continue residing in Hartford.

19. On September 7, 1966, Plaintiff first filed her application with the Connecticut Welfare Department requesting categorical public assistance under the Aid to Families with Dependent Children program, Connecticut General Statutes, Chapter 302, Section 17-84 (1965). Said application was denied on September 26, 1966, without investigation into the merits.

20. October 3, 1966, Plaintiff reapplied to the Connecticut Welfare Department for categorical public assistance. That application was processed on its merits and on November 1, 1966, said application was denied because of the failure of the Plaintiff to meet the statutory requirements set forth in Section 17-2d of the Connecticut General Statues. The language used by the State Welfare worker in denying said application was: "Deny (sic.) because of residency — "Those arriving without regular income or resources sufficient to enable the family to be self-supporting in accordance with Standards of Public Assistance.'"

21. Within the time prescribed by Statute, Connecticut General Statutes, Chapter 299, Section 17-2a and 17-2b (1965). Plaintiff filed her application with the Connecticut Welfare Department requesting that a fair hearing be held to review the decision denying her application for categorical public assistance.

22. On December 16, 1966, a fair hearing was held by Connecticut Welfare Department. Plaintiff appeared personally, represented by her attorney. At said hearing, Plaintiff admitted that she did not meet the statutory requirements of Section 17-2d of the Connecticut General Statutes, but maintained that it was unlawful to deny her application on that basis because said Statute contravenes the United States Constitution. The Welfare Department upheld the decision of the

District Office that Plaintiff does not qualify for assistance because she fails to meet said statutory requirement.

23. Pursuant to its regulation that all temporary assistance must be terminated following a final decision by the State Welfare Department denying an applicant assistance, the Hartford Department of Public Welfare notified the Plaintiff that it would have to terminate all assistance to her immediately.

24. Plaintiff then notified the Hartford Department of Public Welfare of the pendency of this action and requested their assistance in locating a charitable organization to assist her with support pending a final judicial determination of her case. Catholic Family Services of Hartford agreed to assume this burden and as of January 25, 1967, began making weekly payments to the Plaintiff in the amount of $31.60; said payments will continue *only* until a final determination of this action is made.

25. Section 17-2d of the Connecticut General Statutes, on its face and as administered pursuant to Chapter II, Section 219 et seq. of the State Welfare Manual, violates the equal protection clause of Amendment XIV, Section I of the United States Constitution in that it arbitrarily and unreasonably discriminates:

(a) between newly arrived residents of the State of Connecticut by denying Welfare benefits to only certain categories of said residents during their first year of residency;

(b) against newly arrived residents of the State of Connecticut during their first year of residency by denying to them the protection which the Connecticut Welfare Laws afford to all who have resided in Connecticut for more than one year;

in both instances, without a constitutionally justifiable basis.

26. Section 17-2d of the Connecticut General Statutes violates the Priyileges and Immunities Clause of both Article IV, Section 2 (1) and Amendment XIV, Section 1 of the United States Consutution in that:

(a) by authorizing the denial of public assistance to newly arrived indigent residents who wish to remain in Connecticut, it is designed to deter such persons from choosing Connecticut as their place of permanent residence;

(b) by authorizing public assistance to newly arrived indigent residents only until necessary arrangements can be made to return them to their state of last residence, it is designed to force such persons to involuntarily leave Connecticut; all in violation of the constitutionally protected right of a citizen of the United States to travel to and relocate in the State of one's choice.

27. The Plaintiff will suffer irreparable harm, for which there is no plain, adequate, and complete remedy at law, if the Connecticut Welfare Department is permitted to continue to enforce Section 17-2d of the Connecticut General Statutes so as to deny her the Welfare benefits for which she qualifies under Section 17-85 of said Statutes. Said continued enforcement would result in her being deprived of the necessary funds with which to purchase food, clothing, shelter and the other necessities needed to provide herself and her family with a minimal standard of living reflecting health and decency. Also, the continued enforcement of said Statute would prevent the Plaintiff from engaging in a normal relationship with her mother, and would also deny to her the desired opportunity to pursue educational and job training benefits available to other residents of Connecticut who are eligible for categorical public assistance under Section 17-85 of the Connecticut General Statutes. Plaintiff is unable to accomplish these things by herself since she is unable to accept gainful employment because

of her duties in the household, and is without the benefit of assistance from legally responsible relatives.

WHEREFORE, the Plaintiff herein respectfully prays that:

(a) This Court take jurisdiction of this matter;

(b) A special three judge court be called pursuant to Title 28, Section 2281 et seq., to hear and determine the issues;

(c) This Court declare and make it its judgment that Chapter 299, Section 17-2d, Connecticut General Statutes, is unlawful and unenforceable in that it contravenes the Constitution of the United States;

(d) This Court decree that the Defendant and his successors, and all other persons responsible for the enforcement of the Welfare Laws of Connecticut, be permanently restrained and enjoined from the present and future enforcement of Chapter 299, Section 17-2d of the Connecticut General Statutes;

(e) The Defendant be ordered to make retroactive payments to the Plaintiff from November 1, 1966, the date on which Plaintiff's application was illegally denied.

(f) For such other and further relief as the Court may deem proper.

Dated at Hartford, Connecticut, this 14th day of February, 1967.

PLAINTIFF,

By /s/ Brian L. Hollander
BRIAN L. HOLLANDER
(Neighborhood Legal Services, Inc.
Hartford, Connecticut)
Her Attorney

ANSWER

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

VIVIAN MARIE THOMPSON, *Plaintiff*

vs.

BERNARD SHAPIRO, Commissioner Of Welfare, State of Connecticut, *Defendant*

Civil Action No. 11821

March 31, 1967

ANSWER

FIRST DEFENSE

The Complaint fails to state a claim against the defendant upon which relief can be granted.

SECOND DEFENSE

The Court lacks jurisdiction as poor relief is a state not a federal question.

THIRD DEFENSE

1. The defendant admits the allegations in paragraphs 1, 3, 5, 6 through 10, 17, 18, and 20 through 24 of the complaint.

2. The defendant admits the allegation in the first sentence of paragraph 19 of the complaint.

3. The defendant denies the allegations in paragraph 4, 25 and 26 and also the allegation in last sentence in paragraph 19 of the complaint.

4. As to paragraphs 2, and 11 through 16 and also paragraph 27 of the complaint, the defendant alleges he is without sufficient knowledge or information to form a belief as to the truth of these allegations and therefore

denies them and leaves the plaintiff to her proof.

FRANCIS J. MACGREGOR
Attorney for the Defendant

FRANCIS J. MACGREGOR
Assistant Attorney General
1000 Asylum Avenue
Hartford, Connecticut

I hereby certify that a copy of the foregoing, Answer was served upon the plaintiff's attorney by addressing duplicate copies thereof to the office of Brian Hollander, Attorney, Neighborhood Legal Services, Inc., 76 Pliny Street, Hartford, Connecticut, and enclosing the same in a stamped envelope and depositing the same in a U.S. Mailbox on the 31st day of March, 1967.

FRANCIS J. MACGREGOR
Attorney for the Defendant

OPINION

United States District Court
District of Connecticut

VIVIAN MARIE THOMPSON
v.
BERNARD SHAPIRO, Commissioner of Welfare of the State of Connecticut } Civil No. 11,821

Before: SMITH, Circuit Judge, Blumenfeld and Clarie, District Judges.

MEMORANDUM OF DECISION

SMITH, Circuit Judge:

This action was brought in the United States District Court for the District of Connecticut under Title 28 U. S.

Code, §§2281 and 2284, seeking a declaration that Chapter 299, §17-2d of the Connecticut General Statutes is unlawful as in violation of the Constitution of the United States and seeking an injunction against its enforcement and payment of monies unconstitutionally withheld. A three-judge district court was convened pursuant to the statute, hearings were held, briefs were filed and arguments were made. Notification of pendency of the action was given to the United States because of possible effect on federal statutes, and the Solicitor General notified the court of his decision that the United States would not intervene in the case.[1] The court has considered the stipulations of facts, the testimony taken, the briefs and arguments of the parties, and finds the issues in favor of the plaintiff.

In June of 1966, Vivian Marie Thompson, the plaintiff in this action, and a citizen of the United States, moved from Boston, Massachusetts, to Hartford, Connecticut. Plaintiff's purpose in moving was to live near her mother. Then the mother of one and now the mother of two, plaintiff had been receiving Aid to Dependent Children (ADC) from the City of Boston. Boston discontinued this aid in September because of plaintiff's change of residence. When she applied for similar assistance to Bernard Shapiro, Commissioner of Welfare of the State of Connecticut and the defendant in this proceeding, he denied ADC to her on November 1 because plaintiff, although she was otherwise eligible, had not met the one year residence requirement of Conn. Gen. Stat §17-2d which provides as follows:

> "When any person comes into this state without visible means of support for the immediate future and

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[1]The state moved to have the court apply the doctrine of equitable abstention. The court, however, declined to exercise its discretionary equity powers because, " the state statute in question . . . is not fairly subject to an interpretation which will render unnecessary or substantially modify the federal constitutional question . . ."*Harman v. Forsenius*, 380 U.S. 528, 534-35 (1965).

applies for Aid to Dependent Children under Chapter 301 or general assistance under Part I of Chapter 308 within one year from his arrival, such person shall be eligible only for temporary aid or care until arrangements are made for his return, provided ineligibility for Aid to Dependent Children shall not continue beyond the maximum federal residence requirement."

As can be seen, it was to insure continuation of the state's right to receive the substantial payments which the Federal Government pays to the state for federally approved plans of state aid to needy families with children that §17-2d is keyed to the federal limitation on residence requirements. At the present time, the Social Security Act, 49 Stat. 627 (1935), as amended, 42 U. S. C. §602(b) (1959), limits the length of the period of prior residence which a state can require as a condition of eligibility to one year in order to obtain such approval. Thus ADC programs are financed jointly by the State and Federal Governments and generally the responsibility is shared aproximately equally. Some states, like Connecticut, impose the maximum residence requirement allowed by §602(b); other require a shorter period of residence, or none at all. The Catholic Family Services of Hartford have been supporting plaintiff pending the outcome of this action; these private payments, however, are below Connecticut's ADC level. See, *Harvith, The Constitutionality of Residence Tests for General and Categorical Assistance Programs*, 54 Calif. L. Rev. 567, 569 n. 28 (1966) which cites as its authority, NATIONAL TRAVELERS AID ASS'N., ONE MANNER OF LAW — A HANDBOOK ON RESIDENCE REQUIREMENTS IN PUBLIC ASSISTANCE 8-13 (1961).

The Welfare Department of the State of Connecticut has promulgated regulations which construe in the following manner the words "without visible means of support for the immediate future" contained in §17-2d:

1. Persons or families who arrive in Connecticut without specific employment.

2. Those arriving without regular income or resources sufficient to enable the family to be self-supporting in accordance with Standards of Public Assistance.

3. "Immediate future" means within three months after arriving in Connecticut.

NOTE: Support from relatives or friends, or from a public, private, or voluntary agency for three months after arrival will not satisfy the requirements of the law, which relates to self-support rather than to dependency.

Connecticut Welfare Manual, Vol. 1, Ch. II, §219.1.

In accord with the above, the regulations further provide:

1. If the application for assistance is filed within one year after arrival in Connecticut, the applicant must establish that he was self-supporting upon arrival and for the succeeding three months thereafter; or

2. If the application for assistance is filed within one year after arrival in Connecticut, the applicant must clearly establish that he came to Connecticut with a bona fide job offer; or

3. If the application for assistance is filed within one year after arrival in Connecticut, the applicant must establish that he sought employment and had sufficient resources to sustain his family for the period during which a person with his skill would noramlly be without employment while actively seeking work. Personal resources to sustain his family for a period of three months is considered sufficient. Those who come to Connecticut for seasonal employment such as work in tobacco or short term farming are not deemed to have moved with the intent of

establishing residence in Connecticut.

Connecticut Welfare Manual, Vol. 1, Ch. II, §219.2.

Thus, Connecticut withholds ADC for one year to newly-arrived residents unless they come to Connecticut with substantial employment prospects or a certain cash stake.

Plaintiff came to Connecticut with neither the prospect of employment nor the necessary cash stake. It is her contention in this action that Connecticut's denial of ADC results in an unlawful discrimination violative of her constitutional rights under the equal protection and privileges and immunities clauses of the Fourteenth Amendment and the privileges and immunities clause of Art. IV. §2. Plaintiff contends that Connecticut discriminates against her in favor of three classes of persons: newly-arrived residents with employment, newly-arrived residents with a stake and residents of one year's duration.

At the outset, it will be helpful to highlight what is at issue here by excluding what is not. Plaintiff does not argue that Connecticut cannot deny ADC to non-residents. Since plaintiff is a citizen of Connecticut, her reliance on the privileges and immunities clause of Art. IV. §2 is misplaced; that clause only outlaws discrimination by one state against citizens of another state. *New York v. O'Neill*, 359 U.S. 1, 6 (1959). We have no question of the state's power under the Tenth Amendment to provide for relief to the indigent, whether by state agencies, town agencies or otherwise. Nor is any claim made here of a local, state or federal constitutional duty to provide aid at all, or any kind or amount of aid. What we do have is a claim that a state may not discriminate by arbitrarily classifying those who shall and those who shall not be provided with aid, because such discrimination violates rights guaranteed by the first section of the Fourteenth Amendment to the Constitution of the United States.

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Plaintiff's argument based on privileges and immunities is premised primarily on the right of interstate travel. That right, so the argument goes, is abridged by Connecticut's practice of denying ADC to those in plaintiff's situation because it chills their mobility. The existence, source and dimensions of the right to travel have been the subject of much constitutional debate. In *Edwards* v. *California*, 314 U.S. 160 (1941), the Court struck down a California statute which made it a misdemeanor to bring an indigent non-resident into the state. The rationale of the majority was that the statute violated the Commerce Clause. Mr. Justice Jackson, concurring, would have held that the statute abridged the state citizenship and privilege and immunities clauses of the Fourteenth Amendment. 314 U.S. at 181-86. Mr. Justice Douglas, joined by Justices Black and Murphy, would also have rested on the privileges and immunities clause. 314 U.S. at 177-81. In the passport cases, which deal with the right of foreign travel, the Court relied on Fifth Amendment notions of liberty. *Zemel v. Rusk*, 381 U.S. 1, 14 (1965); *Aptheker* v. *Secretary of State*, 378 U.S. 500, 505-06 (1964); *Kent* v. *Dulles*, 357 U.S. 116, 126-27 (1958). Finally, in *United States* v. *Guest*, 383 U.S. 745, 759 (1966), the Court ruled that, "Although there have been recurring differences in emphasis within the Court as to the source of the constitutional right of interstate travel, there is no need here to canvass those differences further. All have agreed that the right exists." The Court thereby

quieted any doubts that might have remained about the existence of the contstitutional right of interestate travel but left unanswered questions regarding its source and dimensions. The defendant contends that the plaintiff is not deprived of the right to travel and to settle in Connecticut since she may do so freely so long as she does not seek welfare benefits until after she has resided here for a year.

Whether or not the state citizenship clause and the privileges and immunities clause[2] are the as yet unnamed source of the right of interstate travel, Mr. Justice Jackson's concurrence in *Edwards,* which as mentioned above was based on those clauses, delineates in timeless language the dimensions of the right.

> . . . it is a privilege of citizenship of the United States,

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[2]To abridge the privileges and immunities clause of the Fourteenth Amendment, the challenged state action must contravene a right inherent in national, as opposed to state, citizenship. *Adamson v. California,* 332 U.S. 46, 52-53 (1947). The Supreme Court has seldom defined a right of national citizenship. See, *Colgate v. Harvey,* 296 U.S. 404, 436 (1935) (Stone, J., dissenting) overruled *Madden v. Kentucky,* 309 U.S. 83 (1940); *Hague v. CIO,* 307 U.S. 496, 520-21 n. 1 (1939) (Stone, J., concurring). According to Mr. Justice Douglas, "judicial reluctance to expand the content of national citizenship . . . has been due to a fear of creating constitutional refuges for a host of rights historically subject to regulation." *Bell v. Maryland,* 378 U.S. 226, 242, 250 (1964) (Douglas, J., concurring). Nevertheless, there is continuous and abundant judicial recognition that the privileges and immunities clause means something. See the cases cited *supra* in this footnote and e.g., *United States v. Guest,* 383 U.S. 745, 762, 764-67 (1966) (Harlan, J., concurring and dissenting); *New York v. O'Neill,* 359 U.S. 1, 12, 13 (1959) (Douglas, J., dissenting). See also, *Oyama v. California,* 332 U.S. 633, 640 (1948) which speaks of "privileges as an American citizen". An *en banc* decision of the Court of Appeals for the Second Circuit, *Spanos v. Skouras Theatres Corp.,* 364 F. 2d 161, 170 (2d Cir.), cert. denied, 385 U.S. 987 (1966), stated among other reasons for its decision, that:

> under the privileges and immunities clause of the Constitution no state can prohibit a citizen with a federal claim or defense from engaging an out-of-state lawyer to collaborate with an in-state lawyer and give legal advice concerning it within the state.

As quoted in the text, *infra,* "If national citizenship means less than" the right "to enter any State of the Union, either for temporary sojourn or for the establishment of permanent residence therein and for gaining resultant citizenship thereof . . . it means nothing." *Edwards v. California,* 314 U.S. 160, 181, 183 (1941) (Jackson, J., concurring).

> protected from state abridgement, to enter any state of the Union, either for temporary sojourn or for the establishment of permanent residence therein and for gaining resultant citizenship thereof. If national citizenship means less than this, it means nothing.
>
> State citizenship is ephemeral. It results only from residence and is gained or lost therewith. That choice of residence was subject to local approval is contrary to the inescapable implications of the westward movement of our citvilization. 314 U.S. at 183.
>
> Any measure which would divide our citizenry on the basis of property into one class free to move from state to state and another class that is poverty-bound to the place where it has suffered misfortune is not only at war with the habit and custom by which our country has expanded, but is also a short-sighted blow at the security of property itself. Property can have no more dangerous, even if unwitting, enemy than one who would make its possession a pretext for unequal or exclusive civil rights. Where those rights are derived from national citizenship no state may impose such a test, and whether the Congress could do so we are not called upon to inquire. 314 U.S. at 185.

In short, the right of interstate travel embodies not only the right to pass through a state but also the right to establish residence therein.

While prior "right to travel cases" have been concerned with absolute proscriptions on movement, *Guest* may be read as proscribing the discouragement of interstate travel. The Court there upheld a paragraph of an indictment based on 18 U. S. C. §241 which outlaws conspiracy to interfere with rights or privileges secured by the Constitution. The paragraph charged interference with, "The right to travel freely to and

from the State of Georgia and to use highway facilities and other instrumentalities of interstate commerce within the State of Georgia." 383 U.S. at 757. The Court went on to say that, "if the predominant purpose of the conspiracy is to impede or prevent the exercise of the right of interstate travel, or to oppress a person because of his exercise of that right, then, whether or not motivated by racial discrimination, the conspiracy becomes a proper object of the federal law under which the indictment in this case was brought." 383 U.S. at 760. By employing the words "impede" and "oppress", the Court must have contemplated that the discouragement of interstate travel is also forbidden. Further support for the proposition that the right of interstate travel also encompasses the right to be free of discouragement of interstate movement may be found by analogy to cases proscribing actions which have a chilling effect on First Amendment rights. See *Dombroski* v. *Pfister*, 380 U.S. 479, 487 (1965); *Wolff* v. *Selective Service Local Board No.* 16, 372 F. 2d 817 (2d Cir. 1967). Finally, it should be italicized that the statute invalidated in *Edwards* penalized the sponsor of the indigent, not the indigent himself. In short, whatever its source, the right to travel exists and included within its dimensions is the right to establish residence in Connecticut. Denying to the plaintiff even a gratuitous benefit because of her exercise of her constitutional right effectively impedes the exercise of this right. See *Sherbert* v. *Verner*, 374 U.S. 398, 405-06 (1963). Because Conn. Gen. Stat. §17-2d has a chilling effect on the right to travel, it is unconstitutional.

Not only does §17-2d abridge the right to travel and its concomitant right to establish residence, but it also denies plaintiff the equal protection of the laws. "Judicial inquiry under the Equal Protection Clause . . . does not end with a showing of equal application among the members of the class defined by the legislation. The courts must reach and determine the question whether the classifications drawn in a sta-

tute are reasonable in light of its purpose . . ." *McLaughlin* v. *Florida*, 379 U.S. 184, 191 (1964). Connecticut states quite frankly that the purpose of §17-2d is to protect its fisc by discouraging entry of those who come needing relief.[3] The state has not shown that any significant number come for that purpose, and the evidence indicates that most of the class discriminated against coming for other purposes, such as, hope of employment, to be with relatives in time of need, as in the case of plaintiff, or to resume residence in Connecticut after a period of absence. Even a classification denying aid to those whose sole or principal purpose in entry is to seek aid, however, would not be sustainable. Anyway, the classification made here, based not on purpose in coming but solely on indigency, hits most heavily those with not even an arguably bad purpose in coming and may not be upheld. As detailed above, the purpose of §17-2d, to discourage entry by those who come needing relief, abridges the right to travel and to establish residence. A similar purpose was behind the statute invalidated in *Edwards*. California in *Edwards*, like Connecticut here, tried to justify its statute under the police power.

> Their coming here has alarmingly increased our taxes and the cost of welfare outlays, old age pensions, and the care of the criminal, the indigent sick, the blind and the insane.
>
> Should the states that have so long tolerated, and even

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[3]The legislative history further demonstrates that this is the purpose of §17-2d. For example, Mr. Cohen, while recognizing that only a small proportion of new arrivals come to Connecticut to seek welfare, made the following argument in favor of §17-2d:

> If we pass this Bill, the word could get around that we are not an easy state, and the rate of influx might relate more closely to the level of job opportunity. As responsible legislators we must, at some point, be interested in costs. I doubt that Connecticut can, or should continue, to allow unlimited migration into the State, on the basis of offering instant money and permanent income to all who can make their way to the State, regardless of their ability to contribute to the economy.

Connecticut General Assembly 1965. House of Representatives Proceedings, Vol. II Part 7, pp. 194-95 (Connecticut State Library).

> fostered, the social conditions that have reduced these people to their state of poverty and wretchedness, be able to get rid of them by low relief and insignificant welfare allowances and drive them into California to become our public charges, upon our immeasurably higher standard of social services? Naturally, when these people can live on relief in California better than they can by working in Mississippi, Arkansas, Texas or Oklahoma, they will continue to come to this State. 314 U.S. at 168.

Here, as there, the burden on the state treasury[4] does not justify an enactment with an invalid purpose.

The policy behind the equal protection clause has long been interpreted as that of preventing states from discriminating against particular classes of persons. *E.g., Yick Wo* v. *Hopkins,* 118 U.S. 356 (1886). Even if the purpose of §17-2d were valid, which it is not, the classifications established by the statute and the regulations promulgated thereunder are not "reasonable in light of its purpose." Admittedly, the classifications are not drawn on the presumptively suspect lines of race, creed or color. Nor, at the time application for aid is made, can it be said that they are based on poverty; for, at that time, all bona fide applicants are indigent. Furthermore, no inquiry is made into the assets at any past point in time of those applicants who enter with a job or those who have one year's residence. But there is a classification based on wealth between those who enter with a cash stake and those like plaintiff who do not. This classification is invalid because there is no showing that in the long run the applicant with the cash would be a lesser drain on the state treasury. Similarly, even though they are not based on wealth, the clas-

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[4]Incidentally, a small part of Connecticut's ADC budget is involved and the burden on the state treasury is not overwhelming. Connecticut estimates that the indigent who would come in should plaintiff prevail would cost another 2% in ADC, that is, some $2,000,000 annually. Approximately half of this sum, of course, would be paid by federal appropriation through Congressional recognition of the national nature of the problem.

sifications of one year's residence or a job are not reasonable in the light of the purpose of §17-2d because again there is no showing that those applicants will be lesser burdens than applicants without jobs or one year's residence. Section 17-2d, in brief, violates the equal protection clause because even if its purpose were valid, which it is clearly not, the classifications are unreasonable.

Granted, the state may provide assistance in a limited form with restrictions, so long as the restrictions are not arbitrary; but, in any case where the government confers advantages on some, it must justify its denial to others by reference to a constitutionally recognized reason. See *Sherbert* v. *Verner*, supra; *Speiser* v. *Randall*, 357 U.S. 513 (1958). In *Carrington* v. *Rash*, 380 U.S. 89, 96 (1965), while striking down a Texas law which prevented servicemen from voting, the Court was careful to emphasize that, "Texas is free to take reasonable and adequate steps . . . to see that all applicants for the vote actually fulfill the requirements of bona fide residence." For example, if there were here a time limit applied equally to all, for the purpose of prevention of fraud, investigation of indigency or other reasonable administrative need, it would undoubtedly be valid. Connecticut's Commissioner of Welfare frankly testified that no residence requirement is needed for any of these purposes.

Judgment may enter in favor of the plaintiff declaring the residence requirement of §17-2d of the Connecticut General Statutes invalid as applied to plaintiff, awarding plaintiff monies unconstitutionally withheld,[5] and enjoining defendant

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[5]That a state cannot be sued without its consent, *Monaco v. Mississippi*, 292 U.S. 313 (1934), is no barrier to awarding money damages here; for, in *Ex Parte Young*, 209 U.S. 123 (1908), the Court held that the Eleventh Amendment did not prevent a suit against a state official who was acting unconstitutionally. Consequently, this court can order Commissioner Shapiro to tender monies which he unconstitutionally withheld. See, *Department of Employment v. United States*, 385 U.S. 355, 358 (1966) where the Court ordered refund of taxes unconstitutionally paid. See also, *Sherbert v. Verner*, 374 U.S. 398 (1963) (unemployment benefits).

from denying plaintiff Aid to Dependent Children solely because of her failure to meet the one-year residence requirement. Form of decree, including computation of amount of damages due, may be submitted by counsel for plaintiff on notice to counsel for defendant.

The above shall serve as the Findings of Fact and Conclusions of Law required by Fed. R. Civ. P. 52(a).

Dated at Hartford, Connecticut, this 19th day of June, 1957.

J. JOSEPH SMITH
United States Circuit Judge

M. JOSEPH BLUMENFELD
United States District Judge

I dissent, with opinion.

T. EMMET CLARIE
United States District Judge

CLARIE, DISTRICT Judge, dissenting:

I respectfully dissent and disagree with the majority opinion that §17-2d of the Connecticut General Statutes is unconstitutional. The residence time qualification for welfare eligibility of non-residents coming into the State, as contained in the law, is a reasonable one directly related to the problem sought to be governed. It is a valid legislative classification, which the State has the discretion and authority to enact. It is not within the province of the judiciary to determine whether the remedy chosen is a wise one, but only whether it is constitutional. *Railway Express* v. *New York*, 336 U.S. 106, 109 (1949); *Daniel* v. *Family Ins. Co.*, 336 U.S. 220, 224-25 (1949); *Olsen* v. *Nebraska*, 313 U.S. 236, 246-47 (1941).

Forty other states of the United States, including Connecticut, have established a one-year residence requirement, as a condition of eligibility to qualify for aid to families with dependent children.[1] Congress itself has sanctioned the laws of these forty states, by enacting 42 U. S. C. A. §602 (b), which provides for a federal contribution to state administered programs, where the condition of eligibility does not exceed a one-year prior residence. As a practical matter, most states require a residence eligibility requirement or waiting period for all forms of welfare benefits.[2]

The majority opinion concedes that the purpose of §17-2d is to protect the state's fiscal responsibilities by discouraging entry of those who come into the state seeking relief.[3] It goes even further and asserts that a classification denying aid to those whose sole or principal purpose in entering the state to seek aid would be unconstitutional. The principal basis for the majority position is that the law abridges the right of freedom to travel and to establish residence; and that because such a statute as §17-2d has a chilling effect on the right to travel, it is therefore unconstitutional. The landmark case cited to support this position is *Edwards* v. *California*, 314 U.S. 160 (1941).

The latter case can be distinguished from the issue being litigated here. It involved a state statute, which made it a crime to transport across the state line into California, one

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[1](a) Stipulation of the Parties, Para. 61.
(b) States which do not have any waiting period are Alaska, Georgia, Hawaii, Kentucky, Maine, North Dakota, South Dakota, New York, Rhode Island, and Vermont. *Pocket Data Book USA*, 1967, U.S. Dept. of Commerce, Statistical Reports Division, Lib. Cong. Card No. A66-7638.

[2]Some thirty-five (35) states require that an applicant must have resided within the state five of the preceding nine years, including the immediate past year to be eligible to receive old age, deaf and blind benefits. Five (5) other states require simply a one-year residence to receive these benfits. See, *Characteristics of State Public Assistance Plans Under the Social Security Act*, U.S. Gov. Print. Off. (1965). Also see, 42 U.S.C.A. §§ 1202, 1352.

[3]*Supra*, note 1(b) at 182.

who was an indigent. This statute was ruled unconstitutional by the United State Supreme Court, because it not only restricted commerce between the several states, but it also actually limited the right of citizens to travel freely between the several states. On the contrary, the statute which is now in issue, does not prohibit travel between the states as such. What it does do and is intended to do, is to deter those who would enter the state for the primary or sole purpose of receiving welfare relief allotments.

Connecticut is comparatively generous in welfare grants. The legislature provides an open-end budget in its biennial appropriations to the State Welfare Department,[4] so that no qualified applicant may be denied aid or caused personal hardship by delay or the arbitrary limitation of budgetary appropriations. Connecticut ranks fourth among all the states, with monthly payments of $197.00 (46% contributed by the Federal Government) for a family of four, compared with the national average of $148.00. An extreme comparison is had by comparing the average monthly payments for a similar family unit in Mississippi of $33.00; in Alabama, $48.00; in Florida, $60.00, and in South Carolina, $64.00. In these latter states, the Federal Government contributes 83%, the state 17%.[5] Thus by way of illustration and comparison, the State of Connecticut's monthly contribution is $109.00 compared with that of Mississippi's of $5.50. It should be noted that §17-2d applies both to the general assistance allotments under §17-273, Part I, Chapter 308, for which no federal contribution is provided, as well as to Chapter 301, Aid to Dependent Children. Uncontrolled demands upon Connecticut's welfare program could effect an overall reduction of aid paid to eligible beneficiaries. It is a proper function of the legislature to enact such reasonable statutory controls, under the police

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[4]CONN. GEN. STAT. (Rev. 1958) § 4-95.
[5]Stipulation of Parties, Para. 58, 59.

powers reserved to the state in the Federal Constitution,[6] that its obligations to aid the needy of the state may continue to be generously fulfilled. *Missouri, Kansas & Texas Railway* v. *Haber,* 169 U.S. 613, 629 (1898).

The United States Supreme Court recognized the problem when it upheld the constitutionality of the Federal Social Security Act:

> "A system of old age pensions has special dangers of its own, if put in force in one state and rejected in another. The existence of such a system is a bait to the needy and dependent elsewhere, encouraging them to migrate and seek a haven of repose. . . ." *Helvering* v. *Davis,* 301 U.S. 619, 644 (1937).

Connecticut has always freely exercised its sovereign right as a state, to legislate and administer welfare governing a myriad of comparable state services. A needy student, to be eligible for a scholarship loan, must have resided within the state for the twelve (12) months previous to his application;[7] to receive aid to send a blind child for instructions, both the child and one of his parents or guardians must have resided within the state for one (1) year preceding the application.[8] To be an elector, one must have resided within the state for six months.[9] To be eligible to hold a liquor permit one must first be an elector.[10] With certain specified exceptions, a one year's residence is a prerequisite to applying for employment in the state merit system.[11] A plaintiff in a divorce action must have resided in the state continuously for three (3) years prior to bringing an action, unless the cause arose subsequent to res-

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[6]Art. X, Amendment to the Constitution of the United States.
[7]CONN. GEN. STAT. (Rev. 1958) § 10-116(c).
[8]CONN. GEN. STAT. (Rev. 1958) § 10-295(b).
[9]CONN. GEN. STAT. (Rev. 1958) § 9-12.
[10]CONN. GEN. STAT. (Rev. 1958) § 30-45(3).
[11]CONN. GEN. STAT. (Rev. 1958) § 5-39.

idence within the state.[12] The captains and members of the crew of oyster boats, in order to be licensed must have a one-year residence,[13] as well as those who would take scallops from state waters;[14] and so on ad infinitum.

Are these residence requirements established through several generations of orderly state growth, now to be struck down as constituting a constitutionally unlawful discrimination between the citizens who have just moved into the state and those who meet these reasonable statutory requisites? Such a decree by judicial fiat would go far toward completing the annihilation of the police powers, which were reserved to the several states and to the people under the Tenth Amendment to the Federal Constitution.

It is not within the province of this Court to pass upon the state legislature's wisdom in causing the enactment of this law, but whether or not the law violates the constitutionally guaranteed rights of its citizens. As Mr. Justice Frankfurter said in *Board of Education* v. *Barnette*, 319 U.S. 624, 647 (1942):

> "It can never be emphasized too much that one's own opinion about the wisdom or evil of a law should be excluded altogether when one is doing one's duty on the bench. The only opinion of our own even looking in that direction that is material is our opinion whether legislators could in reason have enacted such a law."

A historical review of the legislative act which preceded §17-2d illuminates and discloses the true purpose of this law. §1, Public Act No. 501, 1963 Connecticut General Assembly provided:

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[12]CONN. GEN. STAT. (Rev. 1958) § 46-15.
[13]CONN. GEN. STAT. (Rev. 1958) § 26-212.
[14]CONN. GEN. STAT. (Rev. 1958) § 26-288.

"When any person comes into this state without visible means of support for the immediate future and applies for Aid to Dependent Children under Chapter 301 or general assistance under Part I of Chapter 308 of the General Statutes within one month from his arrival, the welfare commissioner shall determine whether such person's remaining will serve the best interests of (a) the state, (b) the town to which the person has come and (c) such person. In making his determination, the commissioner shall consider (a) the circumstances involved in such person's coming to this state, (b) his situation now that he is here, (c) the circumstances involved if he remains, (d) whether he comes to this state able and willing to support himself or whether he came for the purpose of seeking welfare assistance and (e) whether he will need such assistance indefinitely."

The 1965 Session then amended the law, §17-2d, so as to change the phrase "one month from arrival" to "one year from arrival"; it eliminated the statutory restrictive standards for the guidance of the commissioner's administration of the act, and adopted the maximum federal residence requirement, 42 U. S. C. A. §602(b). The intent of the law was to keep those from benefits, who came into the state for the primary purpose of seeking welfare assistance and it should be so construed and interpreted. It has always been a principle of constitutional interpretation that the Courts, if at all possible, should construe a statute so as to bring it within the Constitution. *Michaelson* v. *United States*, 266 U.S. 42 (1924); *United States* v. *Delaware & Hudson Co.*, 213 U.S. 366 (1909).

The Public Welfare Committee of the 1967 Legislature, just adjourned, considered this residence issue in Substitute for Senate Bill No. 166; the bill was defeated by recommitment to committee.

The legislature so exercised its sovereign police powers

to classify equally all non-residents who came into Connecticut, who applied for welfare aid within a stated time period. The law affected all persons similarly situated in the class described:

> "Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment." *Barbier v. Connolly*, 113 U.S. 27, 32 (1885).

Without such a statutory deterrent, this state would be powerless to prevent its become a refuge for welfare recipients of other states; even those who might be encouraged or even assisted to migrate from their settlement of origin.

> "Freedom of residence is restricted as to citizens only while on relief. . . . No interference is had with the right of any citizen to choose and establish a home. What is controlled is the unrestricted imposition of indigent persons and families without settlement upon a community and state where they cannot establish a home because of heir indigent status. . . . Such conditions restrict individual rights and freedom in the interest of the right, security and freedom of the rest of the community of the state." *Matter of Chirillo*, 283 N.Y. 417, 28 N.E. 2d 895 (dissenting opinion).

I further dissent from the award of money damages to the plaintiff by the majority for the past aid alleged to have been unconstitutionally withheld. Connecticut has not consented to be sued for money damages in this class of action. *Monaco v. Mississippi*, 292 U.S. 313, 324 (1933); *Ex Parte State of New York No. 1*, 256 U.S. 490, 497 (1920).

Welfare aid, by its nature, does not create a vested right to back payments which have been denied. Public welfare is

a current subsistence grant from public charity funds administered by statutory standards. This is confirmed by the philosophy behind the state welfare laws requiring reimbursement from paupers for support payments. §§17-277, 17-298. This plaintiff has been living on monthly allotments from a private source, the Catholic Family Services of Hartford. A money judgment award, under the circumstances, would amount to a gratuitous windfall.

Without such a right to reimbursement for past allotments, the case is now moot. The plaintiff moved to Hartford, Connecticut in mid-June, 1966. Her present residence eligibility under §17-2d, having been satisfied, she now qualifies to apply for Aid to Dependent Children under Chapter 301. The case should accordingly be dismissed. *Doremus* v. *Board of Education*, 342 U.S. 429 (1952).

T. EMMET CLARIE
District Judge

JUDGMENT

United States District Court

District of Connecticut

Civil Action, File Number 11,821

VIVIAN MARIE THOMPSON
v.
BERNARD SHAPIRO, Commisioner Of Welfare of The State of Connecticut

Judgment

This action came on for hearing before a specially convened three judge panel of the Court consisting of the Honorable J. Joseph Smith, Circuit Judge presiding, and the

Honorable M. Joseph Blumenfeld and the Honorable T. Emmet Clarie, District Judges, and, the issues having been duly heard and a decision having been duly rendered,

It is Ordered and Adjudged:

That Chapter 299, Section 17-2d of the Connecticut General Statutes is invalid as applied to the Plaintiff:

That an injunction hereby issues permanently restraining and enjoining the Defendant and his successors, and all other persons responsible for the enforcement of the welfare law of Connecticut from the present and further enforcement of Chapter 299, Section 17-2d of the Connecticut General Statutes against the Plaintiff:

That the Defendant pay to the Plaintiff the sum of $311.91, the sum of monies unconstitutionally withheld from the Plaintiff by the Defendant, computed as follows:

Monthly Connecticut ADC Allowance for Food, Clothing and Personal Incidentals		Rent Actually Paid from Nov. 1, 1966 to June 27, 1967
Nov. (beginning Nov. 1, 1966)	$64.65	(Mother & 1 child under 2 yrs. of age)
Dec.	$64.65	(Mother & 1 child under 2 yrs. of age)
Jan.	$64.65	(Mother & 1 child under 2 yrs. of age)
Feb.	$86.65	(Mother & 2 children under 2 yrs. of age)
March	$86.65	(Mother & 2 children under 2 yrs. of age)

April	$86.65	(Mother & 2 children under 2 yrs. of age)	35 wks. @ $12.00 a wk.
May	$86.65	(Mother & 2 children under 2 yrs. of age)	
June (ending June 27, 1967)	$78.16		$420.00
	$618.71		$420.00
			618.71
			$1,038.71

Less amount paid to Plaintiff by Catholic Family Services from 1-25-67 to 6-27-67 (23 weeks at $31.60 a week) 726.80

TOTAL $ 311.91

Dated at Hartford, Connecticut, this day of , 1967.

Clerk of the Court

STIPULATION OF FACTS DATED MAY 16, 1967

United States District Court

District of Connecticut

VIVIAN MARIE THOMPSON
v.
BERNARD SHAPIRO, Commissioner Of Welfare of the State of Connecticut

May 16, 1967

Civil Action # 11,821

AGREED STIPULATION OF FACTS

1. Defendant, Bernard Shapiro, as Commissioner of Welfare, is charged with administering the Welfare Laws of the State of Connecticut.

2. Plaintiff, Vivian Marie Thompson, is a resident of Hartford, Connecticut, currently residing at 25 Florence Street, Hartford, Connecticut. She is a resident and taxpayer of the State of Connecticut.

3. The plaintiff is 19 years old,

4. The plaintiff is the unwed mother of a thirteen month old boy and a two week old girl.

5. The plaintiff's formal education ended during her junior year in Dorchester Public High School, Dorchester, Massachusetts.

6. The plaintiff and her son resided at 9 Greenwood Street, Dorchester, Massachusetts, for the eight months prior to moving to Hartford, Connecticut.

7. The plaintiff and her son received continuous ADC assistance from the City of Boston during the eight months that they lived at 9 Greenwood Street.

8. The plaintiff was denied any and all assistance, financial and otherwise, by her relatives in the Boston, Massachusetts area.

9. The plaintiff has no knowledge of her natural father's whereabouts.

10. The plaintiff's mother is Mrs. Bessie Harper of 1215 Main Street, Hartford, Connecticut.

11. The plaintiff's mother has continuously resided and worked in Hartford, Connecticut, for approximately eight years.

12. During the past eight years, the plaintiff's mother provided the plaintiff and her son with periodic financial assistance.

13. During the past eight years, the plaintiff's mother regularly visited and wrote to the plaintiff at her home in Massachusetts.

14. Plaintiff and her son moved directly to Hartford, Connecticut from Dorchester, Massachusetts in June, 1966.

15. The plaintiff and her son moved to Hartford, Connecticut to be near the plaintiff's mother, Mrs. Bessie Harper.

16. Plaintiff was encouraged, by her mother, to take up residence in Hartford, Connecticut.

17. The plaintiff's mother assured her that she would assist her and her son financially, to whatever extent possible.

18. Upon arriving in Hartford, Connecticut, the plaintiff and her son immediately moved in with the plaintiff's mother at the latter's residence at 1215 Main Street.

19. The plaintiff and her son resided with her mother at 1215 Main Street until on or about August 26, 1966, when they moved to 25 Florence Street, Hartford, Connecticut.

20. The plaintiff's mother contributed support in the form of housing and food to the plaintiff and her son during the time that they resided with her.

21. The only other source of support available to the plaintiff and her son during the period of time that they resided with the plaintiff's mother were the remaining public assistance benefits which the plaintiff received from Boston, Massachusetts.

22. The plaintiff and her son were forced to move to their own quarters at 25 Florence Street because it became financially impossible for her mother to continue to assist her and her son on the latter's income.

23. At the time that her mother advised her that she would have to move to her own residence, the plaintiff's only intention was to find suitable quarters elsewhere in Hartford.

24. At the time that she moved from 1215 Main Street the plaintiff did not attempt to return to Massachusetts.

25. The plaintiff was five months pregnant when she stopped receiving financial assistance from her mother.

26. When she took up residence at 25 Florence Street, the plaintiff was solely responsible for the daily care of her son, and was without sufficient funds to hire a baby-sitter.

27. Because of her pregnancy and her responsibilities to her son, the plaintiff was unable to either seek gainful employment or enroll in a Work Training Program under the Manpower Development Training Act administered by the State Welfare Department, at the time that she moved to 25 Florence Street, Hartford.

28. On September 7, 1966, plaintiff being solely responsible for the support of herself and her son and being without any means to accomplish such support, filed an application with the Hartford Department of Public Welfare requesting public assistance from said agency.

29. On September 7, 1966, the Hartford Department of Public Welfare advised the plaintiff that any assistance which she would receive from that agency would be temporary and that she would have to apply to the Connecticut Welfare Department for Aid to Families with Dependent Children, if she wished to receive public assistance on a continuing basis.

30. On September 7, 1966, the plaintiff was also advised by the Hartford Department of Public Welfare that she would probably not qualify for public assistance from the Connecticut Welfare Department because of the Connecticut

Residence Statute applicable to applicants for Aid to Families with Dependent Children.

31. On September 7, 1966, the plaintiff declined to accept assistance from the Hartford Department of Public Welfare for the purpose of returning to Massachusetts for the reason that she desired to continue residing in Hartford.

32. On September 8, 1966, plaintiff's application for public assistance for herself and her son was approved by the Hartford Department of Public Welfare, and the plaintiff received her initial assistance check from said agency.

33. On September 7, the plaintiff filed her first application with the Connecticut Welfare Department requesting categorical public assistance under the Aid to Families with Dependent Children Program.

34. Plaintiff's application of September 7, 1966, for Aid to Families with Dependent Children, was never processed by the Connecticut Welfare Department because the appointment wasn't kept.

35. On October 3, 1966, plaintiff reapplied to the Connecticut Welfare Department for categorical public assistance under the Aid to Families with Dependent Children Program.

36. Plaintiff's application of October 3, 1966 was denied on November 1, 1966 because the plaintiff failed to meet the residence requirement set forth in Sec. 17-2d of the Connecticut Gen. Stats. "which is applicable to all ADC recipients."

37. The plaintiff qualified for Aid to Families with Dependent Children from the Connecticut Welfare Department in all other respects.

38. Within the time prescribed by statute, the plaintiff

filed her application with the Connecticut Welfare Department requesting that a Fair Hearing be held to review the decision denying her application for categorical public assistance.

39. On December 16, 1966, a Fair Hearing was held by the Connecticut Welfare Department.

40. The plaintiff personally appeared at said Fair Hearing, represented by counsel.

41. At said Fair Hearing, plaintiff admitted that she did not meet the applicable residence statute, but maintained that it was unlawful to deny her application on that basis because said Statute contravenes the United States Constitution.

42. On January 3, 1967, the Connecticut Welfare Department upheld the decision of the District Office that plaintiff does not qualify for Aid to Families with Dependent Children because she fails to satisfy the standards of the applicable residence statute.

43. Upon being notified that she did not qualify for Aid to Families with Dependent Children from the Connecticut Welfare Department, the plaintiff decided to initiate this present action.

44. At the plaintiff's request, the Hartford Department of Public Welfare agreed to assist her in locating a charitable organization in Hartford to support her and her family pending a final judicial determination of her case.

45. Catholic Family Services of Hartford agreed to support the plaintiff and her family and as of January 25, 1967, began making weekly payments to the plaintiff in the amount of $31.60.

46. The plaintiff will receive assistance from Catholic

Family Services of Hartford only until a final determination is reached in this action.

47. The plaintiff desires to remain in Hartford so that she can continue to be near her mother.

48. The plaintiff, as a Connecticut resident, desires to have the same educational and job training opportunities that are made available to other Connecticut residents who are provided with public assistance by the Connecticut Welfare Department.

49. The plaintiff is still without the benefit of financial assistance from legally responsible relatives.

50. In the absence of receiving public assistance from the Connecticut Welfare Department, the plaintiff will be unable to support herself and her family when she stops receiving assistance from Catholic Family Services of Hartford.

51. Because of the manner in which the Aid to Families with Dependent Children Program is currently administered by the Connecticut Welfare Department, the abrupt elimination of Sec. 17-2d of the Connecticut General Statutes from the law, would cause no immediate or long term disruption in the administration of said program.

52. Connecticut has no residency requirements for any public assistance program except Aid to Dependent Children.

53. Connecticut will give Aid to Dependent Children to persons entering Connecticut without visible means of support for sixty days if they indicate a willingness to sign up for Title 5 Job Training under the Economic Opportunity Act.

54. From April 1, 1965, when the Title Five program became active in Connecticut, to December 31, 1966, three thousand one hundred thirty welfare cases were trained.

55. Connecticut contributes 54% of the costs of Aid to Dependent Children while the Federal Government contributes 46%.

56. Connecticut contributes half the cost of Aid to Dependent Children to Town Aid Programs of which 46% is contributed by the Federal Government and 54% by the state and the other half is contributed by the towns themselves.

57. The average cost per individual case on ADC in Connecticut averages $48.40 per month.

58. The maximum federal contribution in any state in the United States on ADC is $22.00 a month.

59. The federal matching formula is: 5/6ths of the first $18.00 of the maintenance award or $15.00 per month; 50% of the next $14.00 of maintenance award or $7.00 per month for a total of $22.00.

60. The average yearly per person case load on ADC from 1960 to 1966 in the State of Connecticut was as follows: 1960 26,076; 1961 29,955; 1962 33,660; 1963 37,208; 1964 43,281; 1965 47,032; 1966 48,485.

61. In 1965 there were 40 states in the United States that had residency requirements for Aid to Dependent Children.

THE PLAINTIFF

By /s/ BRIAN L. HOLLANDER
Brian L. Hollander

THE DEFENDANT

By /s/ FRANCIS J. MACGREGOR
Francis J. MacGregor